

## Message Text

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ACTION L-03

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R 051045Z FEB 74

FM AMEMBASSY MOGADISCIO

TO SECSTATE WASHDC 1599

INFO AMEMBASSY ADDIS ABABA

AMEMBASSY BEIRUT

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ADDIS ABABA FOR RSO

BEIRUT FOR RMO AND RSS

E.O. 11652: N/A

TAGS: CASC

SUBJ: SOMALI DETENTION OF US MARINES

REF: A. STATE 21688; B. MOGADISCIO 086

1. SUMMARY: MARINES VANDEVENDER AND PUMPLUN STOOD TRIAL FEBRUARY 5. PROSECUTION ASKED FINE OF 500 SOMALI SHILLINGS EACH. SENTENCING DUE FEBRUARY 17. END SUMMARY.

2. ACTING FONMIN ABDURAHMAN INFORMED ME FEBRUARY 3 THAT FONOFF WAS STILL ATTEMPTING TO PERSUADE COURT TO DISMISS CASE OR ASSESS SMALL FINE WITHOUT REQUIRING PERSONAL APPEARANCE. COURT WAS, HOWEVER, BEING DIFFICULT ON QUESTION OF APPEARANCE. I STATED THAT WE COULD PROBABLY WAIVE IMMUNITY IN THIS ONE INSTANCE TO PERMIT PAYMENT OF FINE OR, IF ABSOLUTELY NECESSARY, TO ALLOW MARINES TO APPEAR, IF WE RECEIVED NOTE FROM FONOFF REQUESTING US TO DO SO. ABDURAHMAN STATED HE WOULD MUCH APPRECIATE SUCH

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A WAIVER OF IMMUNITY ON OUR PART.

3. AS REPEATED EFFORTS TO GET FURTHER WORD FROM ABDURAHMAN OR FONOFF WERE UNAVAILING, WE SENT NOTE TO FONOFF MORNING FEBRUARY 5 NOTING THAT AT ABDURAHMAN'S REQUEST USG WILLING, UNDER ARTICLE 32 OF VIENNA CONVENTION, TO WAIVE IMMUNITY FOR MESSRS. PUMPLUN AND VANDEVENDER IN THIS CASE TO EXTENT OF ALLOWING THEM TO APPEAR IN COURT AND PAY A FINE IF LEVIED. NOTE REITERATED OUR POSITION THAT ALL MEMBERS OF EMBASSY'S ADMINISTRATIVE AND TECHNICAL STAFF IMMUNE FROM CRIMINAL JURISDICTION.

4. SHORTLY AFTER SCHEDULED OPENING OF HEARING ( AND AFTER MARINES ALREADY IN COURT) FONOFF CHIEF OF PROTOCOL CALLED TO SAY ABDURAHMAN HAD ASKED HIM TO TELL US THAT MARINES NEED NOT RPT NOT APPEAR IN COURT, BUT THAT IF THESE INDIVIDUALS INVOLVED IN ANY FUTURE INCIDENTS COURT APPEARANCE WOULD BE REQUIRED. WE POINTED OUT THAT INDIVIDUALS CONCERNED WERE ALREADY IN COURT.

5. PUMPLUN AND VANDEVENDER WERE NOT RPT NOT CALLED TO WITNESS STAND DURING THEIR THREE AND ONE HALF HOUR TRIAL. PROSECUTION ASKED COURT TO LEVY 500 SOMALI SHILLING FINE EACH AND SENTENCING SET FOR FEBRUARY 17. DEFENSE ATTORNEY, IN SUMMATION, EXHIBITED EMBASSY NOTE (PARA. 3 ABOVE) AND STATED EMBASSY HAD WAIVED IMMUNITIES HELD UNDER VIENNA CONVENTION. THE PRESIDING JUDGE TOOK VIGOROUS EXCEPTION, ASSERTING THERE WAS NO QUESTION OF EITHER MAN ENJOYING IMMUNITIES. COURT CATEGORICALLY REFUSED DEFENSE LAWYER'S REQUEST FOR PUMPLUN TO LEAVE SOMALIA BEFORE SENTENCING ON FEBRUARY 17.

6. WE ARE FOLLOWING UP WITH ANOTHER NOTE PUTTING ON RECORD FACT THAT FONOFF TOLD US VANDEVENDER AND PUMPLUN DID NOT HAVE TO APPEAR AT TRIAL, ASKING THAT THEIR APPEARANCE AT FEBRUARY 17 SENTENCING BE WAIVED, AND REQUESTING THAT PUMPLUN BE ALLOWED TO DEPART SOMALIA BEFORE FEBRUARY 17.

7. COMMENT: IT IS BY NO MEANS CLEAR TO US THAT FONOFF HAD IN FACT SECURED COURT'S AGREEMENT TO NON-APPEARANCE OF MARINES. IN THESE CIRCUMSTANCES, FEEL OUR LIMITED WAIVER OF IMMUNITY IN RESPONSE TO ACTING FONMIN'S ORAL REQUEST WAS BEST WAY TO AVOID CONFRONTATION WITH FONOFF AND/OR COURT WHILE PRESERVING OUR PRINCIPLE OF IMMUNITY FOR TECHNICAL AND ADMINISTRATIVE STAFF.  
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